

2 Ct

ORIGINAL

33

11/7/01  
mf

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Civil No. 1:01-0817

(Judge William W. Caldwell)

(Magistrate Judge Malachy E. Mannion)

FILED  
HARRISBURG, PA

NOV 06 2001

MARY E. D'ANDREA, CLERK  
For: *[Signature]* Deputy Clerk

**CORRECTIONS DEFENDANTS' WAIVER OF  
REPLY TO PLAINTIFF'S AMENDED COMPLAINT**

The Corrections Defendants,<sup>1</sup> by and through their attorney, John J. Talaber, Assistant Counsel for the Pennsylvania Department of Corrections, in accordance with the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997(e), as amended by §803(d) of the Prison Litigation Reform Act of 1995, hereby waive their right to reply to the Plaintiff's complaint in this action which is brought

<sup>1</sup> The Corrections Defendants include: (1) Kathy Allen; (2) Nancy Ambrose; (3) Mary Bernas; (4) Sharon Burks; (5) Kandis Dascani; (6) John Dunn; (7) Harry Ersek; (8) Frank Gillis; (9) Robert Glenney; (10) Robert Gooler; (11) Dr. Robyn Johns; (12) Roy Johnson; (13) Tim Jordan; (14) Bernon Lane (15) John Learn; (16) Edward Mason; (17) Miller; (18) James Morgan; (19) Wilma Sewell; (20) Raymond Smith; (21) David Varano; (22) Voeckler; (23) George Weaver; (24) Lynn Wolfgang; (25) Gerald Whysong; (26) Pat Yarger; (27) Angela Zimmerman; (28) Hazel Zimmerman.

pursuant to 42 U.S.C. §1983. This waiver does not constitute an admission of any of the allegations contained in the Amended Complaint. Furthermore, the Corrections Defendants assert all available affirmative defenses to the Amended Complaint including, but not limited to, the following:

**FIRST AFFIRMATIVE DEFENSE**

The Corrections Defendants acted at all times within the scope of their authority and without any actual or imputed knowledge that their actions violated any of the Plaintiff's constitutional rights; therefore, the Corrections Defendants are immune from suit.

**SECOND AFFIRMATIVE DEFENSE**

The Corrections Defendants at all times were acting in reliance upon valid federal and state laws and regulations.

**THIRD AFFIRMATIVE DEFENSE**

The Corrections Defendants assert each and every defense available to them under the existing Civil Rights Act.

**FOURTH AFFIRMATIVE DEFENSE**

Any and all alleged damages or injuries sustained by Plaintiff resulted not from the conduct or acts of the Corrections Defendants, but from the conduct or acts of Plaintiff or other persons.

**FIFTH AFFIRMATIVE DEFENSE**

Whatever actions may have been taken by the Corrections Defendants that caused loss to the Plaintiff were justified.

**SIXTH AFFIRMATIVE DEFENSE**

The Corrections Defendants lacked personal or direct involvement in any of the alleged violations of Plaintiff's rights.

**SEVENTH AFFIRMATIVE DEFENSE**

The Corrections Defendants are entitled to official immunity from Plaintiff's claims.

**EIGHTH AFFIRMATIVE DEFENSE**

At all times relevant hereto, any actions or inactions of the Corrections Defendants were done within the scope of their authority, in good faith, and without malice.

**NINTH AFFIRMATIVE DEFENSE**

The Corrections Defendants are entitled to objective, good faith immunity from Plaintiff's claims and have not violated any rights and/or clearly established rights of Plaintiff.

**TENTH AFFIRMATIVE DEFENSE**

Whatever actions or inactions committed by the Corrections Defendants that may have caused loss to the Plaintiff, (but are expressly denied), were justified.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff consented to any actions or inactions committed by the Corrections Defendants; therefore, Plaintiff's claims against the Corrections Defendants are barred.

**TWELFTH AFFIRMATIVE DEFENSE**

Any actions or inactions committed by the Corrections Defendants were done pursuant to duties required by statute, regulation or directive; therefore, the Corrections Defendants are immune from suit.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Any actions or inactions committed by the Corrections Defendants were matters within the discretion granted to the Corrections Defendants by statute, regulation or directive; therefore, the Corrections Defendants are immune from suit.

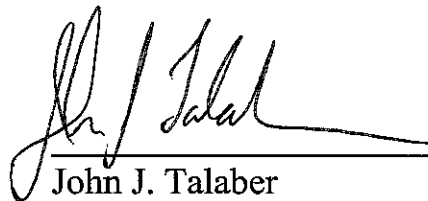
**FOURTEENTH AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim or cause of action upon which relief may be granted.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The Corrections Defendants affirmatively plead any other matter constituting an avoidance or affirmative defense.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Talaber", is written over a horizontal line.

John J. Talaber  
Assistant Counsel  
Attorney Id. No. 83279

Pa. Department of Corrections  
55 Utley Drive  
Camp Hill, PA 17011  
(717) 731-0444  
Dated: November 6, 2001

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Civil No. 1:01-0817

(Judge William W. Caldwell)

(Magistrate Judge Malachy E. Mannion)

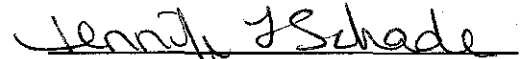
**CERTIFICATE OF SERVICE**

I undersigned hereby certifies that a copy of the Corrections Defendants' Waiver of Reply to Plaintiff's Amended Complaint in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail  
addressed as follows:

Kim Smith, CT-2162  
SCI-Coal Township  
1 Kelley Drive  
Coal Township, PA 17866-1020

James D. Young, Esquire  
Lavery, Faherty, Young and Patterson, P.C.  
301 Market Street  
P.O. Box 1245  
Harrisburg, PA 17108-1245

  
Jennifer L. Schade  
Clerk Typist II

PA Department of Corrections  
55 Utley Drive  
Camp Hill, PA 17011  
(717) 731-0444  
Dated: November 6, 2001